

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: KUO, Terry B.J.; YANG, Cheryl C.H.

SERIAL NO.: 10/790,508

ART UNIT: 3762

FILED: March 1, 2004

EXAMINER: Greene, D. D.

TITLE: METHOD AND APPARATUS FOR ANALYZING HEART RATE VARIABILITY

RENEWED PETITION FOR WITHDRAWAL OF A  
HOLDING OF ABANDONMENT UNDER 37 C.F.R. § 1.181(a)  
STATEMENT OF FACTS

Mail Stop Petitions  
Commissioner for Patents  
P. O. Box 1450  
Alexandria, VA 22313-1450

Sir:

In accordance with 37 C.F.R. § 1.181(a), the following is a statement in support of a petition to withdraw the holding of abandonment for non-receipt of U.S. Patent and Trademark Office correspondence.

1. The Decision on Petition of December 11, 2006 dismissed the Petition for Withdrawal of a Holding of Abandonment under 37 C.F.R. § 1.181(a) and granted the alternative Petition to Revive for Unintentional Circumstances under 37 C.F.R. § 1.137(b).
2. It was indicated that the Petition for Withdrawal was dismissed for failure to include a statement from the Practitioner and failure to include the proper copies of the docket record.
3. Applicant's attorney now presents the required documents to support withdrawal of the holding of abandonment.

4. Applicant has attached the statement from Mr. John S. Egbert, regarding the non-receipt of the Office Action, the search of the file jacket/folder and the contents of the docket records. Please find Exhibit C attached hereto.
5. Exhibit D now presents the proper copy of the docketing book. The docketing book has been provided to cover dates on and around August 25, 2005, September 25, 2005, and October 25, 2005. These are the relevant dates because the response to the Office Action would have been docketed for a response on these dates. The docketing book shows that the Office Action was not docketed for a response, indicating that Applicant's attorney never received the Office Action.
6. Applicant now files the present Renewed Petition to Withdraw the holding of abandonment because Applicant contends that the present application is not in fact abandoned. A timely response was not filed because the Office Action of July 25, 2005 was never received.
7. Applicant respectfully requests a refund of the petition fee under 37 C.F.R. § 1.26 for the petition for revival based upon unintentional delay, if the present Renewed Petition under 37 C.F.R. § 1.181(a) is granted. Applicant has already included a proper response, comprising transmittal of an amendment, concurrent with the filing of the original Petition on November 15, 2006.

Applicant petitions for withdrawal of the holding of abandonment because the application is not in fact abandoned. Applicant never received the Office Action of July 25, 2005, and Applicant was not able to timely file a responsive amendment. Applicant first learned of the abandonment on

September 15, 2006 and promptly prepared the reply and multiple petitions to revive the application or to withdraw the holding of abandonment.

Applicant respectfully contends that the holding of abandonment be withdrawn. The U.S. Patent and Trademark Office has received the required response, and the Office Action was never received by mail by the Applicant.

Applicant renews the petition for withdrawal of the holding of abandonment based upon the corrected evidence of the non-receipt of the Office Action of July 25, 2005, including the statement from the practitioner and the correct docket record. Pursuant to 37 C.F.R. § 1.181(a), no government fee is included.

Furthermore, if the renewed Petition under 37 C.F.R. § 1.181(a) is granted, Applicant respectfully requests a refund of the petition fee under 37 C.F.R. § 1.26 for the petition for revival based upon unintentional delay, granted on December 11, 2006. Applicant has previously provided a proper response, comprising transmittal of an amendment. Applicant files the required reply to secure withdrawal of abandonment of the patent application for consideration on the merits and eventual issuance of allowable subject matter by the U.S. Patent and Trademark Office. No new matter has been added by the present amendment.

The present Petition for Revival is less than one year of the actual abandonment. The present Petition for Revival is less than three months after receiving Notice of Abandonment.

Any additional fees for the petition to revive or any overpayment with regard to this petition and response to the Office Action may be credited or debited to Deposit Account 08-0879.

The present renewed petition is submitted in response to the Decision on Petition of December 11, 2006. Any additional fees due in this matter may be charged to the Applicant's attorney Deposit Account No. 08-0879.

Applicant respectfully contends that granting the present petition will place the application in a condition for consideration on the merits.

Respectfully submitted,

December 21, 2006

/Andrew W. Chu/

Date

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CERTIFICATE OF MAILING

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Sir:

I hereby certify that the attached correspondence comprising:

RENEWED PETITION FOR WITHDRAWAL OF A  
HOLDING OF ABANDONMENT UNDER 37 C.F.R. § 1.181(a)

is being deposited with the United States Postal Service with sufficient postage as first class mail  
in an envelope addressed to:

Mail Stop Petitions  
Commissioner for Patents  
P. O. Box 1450  
Alexandria, VA 22313-1450

on December 21, 2006 by e-file.

Respectfully submitted,

December 21, 2006

/Andrew W. Chu/

Date

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